

**The Hill**, June 27, 2012

## **GOP choosing path of partisan acrimony with contempt vote**

By Rep. Brad Miller (D-N.C.)

If House Republicans are sincerely trying to obtain documents important to their "Operation Fast and Furious" investigation, rather than just provoking another partisan confrontation with a Democratic president, they are doing it all wrong.

The right way is now established.

Five years ago House Democrats investigated suspected abuses of power by the administration of a Republican president, George W. Bush. Sworn statements and documents grudgingly provided supported the conclusion that the Bush Administration fired U.S. Attorneys for not playing politics in criminal prosecutions to help Republicans.

The administration claimed executive privilege and refused to provide the investigating committee some subpoenaed documents. More significant, the Administration refused to allow any testimony by the White House officials - Josh Bolton, Harriet Miers and Karl Rove—who apparently made the decision to fire the U.S. Attorneys.

In recent history Congress enforced our subpoena power by referring criminal contempt of Congress charges to the U.S. Attorney under an 1857 statute.

Threats of prosecution were fairly common in disputes between Congress and the president, but actual prosecutions were exceedingly rare. What happened instead was each side postured, accused the other of improper motives, announced that important principles were at stake, appealed to public opinion, went to the brink of confrontation, and then compromised.

The Bush Administration was not given to compromise, however, nor was the Republican base.

In an increasingly polarized nation, neither side was winning the battle for public opinion. Democrats thought the executive privilege claim was a cover-up. Republicans thought the investigation was a partisan witch hunt.

More important, there was a practical problem in referring criminal charges to the U.S. Attorney for prosecution. The U.S. Attorney reported to the Attorney General, who reported to the president. The administration announced that the Justice Department would instruct the U.S. Attorney not to prosecute any charges that Congress referred.

House Democrats' response now seems blindingly obvious: we brought a lawsuit asking the court to decide if we were entitled to the subpoenaed information, and if we were, to issue an injunction requiring the Bush Administration to provide it.

The administration argued that the court did not have the power to decide the case. The judge disagreed. "[I]n essence, this lawsuit merely seeks to enforce a subpoena, which is a routine and quintessential judicial task," the judge said.

The judge paused over the administration's argument that the court should let Congress and the president resolve the dispute through "the process of negotiation and accommodation," but concluded that there would be no compromise, and leaving Congress to our own devices "would only exacerbate the acrimony...and would present a great risk of precipitating a constitutional crisis."

The "Operation Fast and Furious" investigation is even more polarized and acrimonious. Democrats do not really even understand what witch House Republicans are hunting. The scandal appears simply to have been the result of poor judgment by law enforcement officials many miles and reporting levels removed from the Attorney General or president. The suspicion of a Republican fringe that secret documents show some nefarious conduct at higher levels of the Justice Department is just puzzling. House Republicans appear to have made the investigation as burdensome and disruptive as possible. The Attorney General has testified repeatedly as part of the investigation, in contrast to the Bush Administration's flat refusal to allow any testimony from White House officials.

The Obama Administration's legal objections are hardly frivolous. The courts recognize some privilege to encourage uninhibited debates within the executive branch, but because Congress and the President have usually compromised rather than go to court, the privilege remains ill-defined.

House Republicans should just file a lawsuit so a court can decide whether the subpoenaed documents are privileged. Instead, they are forcing a vote to prosecute Attorney General Eric Holder for the crime of taking plausible positions on uncertain legal questions.

Judges expect lawyers to make careful, calm legal arguments based upon the law and facts, and discourage tedious repetition of dishonest talking points and personal attacks. Why would House Republicans instead choose an intemperate, acrimonious partisan debate on cable television and on the House floor?

Maybe they just prefer partisan acrimony.

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